ARTICLE III. RIGHTS OF PARTIES.

RULE 6. ATTORNEYS, APPOINTMENT OF COUNSEL.

Rule 6.1(b) Rights to counsel; waiver of rights to counsel—Right to appointed counsel.

6.1.b.110 A defendant has the right to counsel and has the right to proceed without counsel, but does not have the right to hybrid representation.

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174, ¶¶ 38–39 (2011) (trial court allowed defendant to represent himself; court held trial court did not abuse discretion in refusing defendant's request to allow advisory counsel to cross-examine state's DNA expert, but then allow defendant to continue to represent himself for other parts of trial).

RULE 8. SPEEDY TRIAL.

Rule 8.4(a) Excluded periods—Delays occasioned by defendant.

8.4.a.040 When the defendant files a motion that results in a delay in the proceedings, the time that is excluded is from the date the defendant files the motion until the date the matter is resolved.

State v. Hunter, ___ Ariz. ___, 260 P.3d 1107, ¶¶ 4–8 (Ct. App. 2011) (defendant filed a motion for new determination of probable cause; court held time excluded ran from date defendant filed motion; court rejected defendant's contention time ran from date court granted remand, and overruled *State v. Harris,* 25 Ariz. App. 76, 541 P.2d 402 (1975)).

Rule 8.4(b) Excluded periods—Delays occasioned by remand for new determination of probable cause.

8.4.b.010 When the defendant files a motion for a new determination of probable cause, the time that is excluded is from the date the defendant files the motion and not from the date the trial court grants the motion.

State v. Hunter, ___ Ariz. ___, 260 P.3d 1107, ¶¶ 4–8 (Ct. App. 2011) (defendant filed a motion for new determination of probable cause; court held time excluded ran from date defendant filed motion; court rejected defendant's contention time ran from date court granted remand, and overruled *State v. Harris,* 25 Ariz. App. 76, 541 P.2d 402 (1975)).

Rule 8.5(b) Continuances—Grounds for motion.

8.5.b.040 The decision whether to grant a continuance is within the sound discretion of the trial court, and an appellate court will not overturn the trial court's ruling absent a clear abuse of that discretion; the defendant must show prejudice before the court will find an abuse of discretion.

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174, ¶¶ 48–56 (2011) (in death penalty case, defendant arraigned 1/2003; trial court set trial for 6/15/04; at defendant's request, trial court continued trial numerous times, to 10/18/06, then to 6/25/07, then to 8/2007, then to 9/13/07, then to 11/13/07; week before trial, defendant requested 3-month continuance to develop mitigation; court held trial court did not abuse discretion in denying last continuance).

Rule 8.6 Denial of speedy trial.

8.6.060 When there has been a violation of the time limits, the trial court should dismiss with prejudice only if the defendant has shown the defense has been impaired because of the delay.

State v. Hunter, ___ Ariz. ___, 260 P.3d 1107, ¶ 10 (Ct. App. 2011) (defendant filed a motion for new determination of probable cause; court held time excluded ran from date defendant filed motion, and rejected defendant's contention time ran from date court granted remand; moreover, court held defendant failed to show his defense was harmed in any way).

RULE 9. PRESENCE OF DEFENDANT, WITNESSES AND SPECTATORS.

Rule 9.1 Defendant's waiver of his right to be present.

9.1.010 A defendant may waive the right to be present at any proceeding by voluntarily absenting himself or herself from the proceeding.

State v. Lehr, 227 Ariz. 140, 254 P.3d 379, ¶¶ 7–10, 13–15 (2011) (defendant repeatedly told trial court he did not want to attend pretrial and trial proceedings; trial court held lengthy discussions to confirm defendant understood his right to be present and that he knowingly, intelligently, and voluntarily waived that right; record did not support defendant's contention that he waived his right to be present only because he did not want to wear stun belt).

9.1.020 When a defendant waives the right to be present, the trial court is not required to ask the defendant why he or she does not want to be present.

State v. Lehr, 227 Ariz. 140, 254 P.3d 379, ¶¶ 11–12 (2011) (court notes some judges ask for reasons, but states trial courts are not constitutionally required to do so).

9.1.030 The trial court may infer that defendant's absence is voluntary if defendant (1) had personal notice of the time of the proceeding, (2) was aware of the right to be present at the proceeding, and (3) was warned that the proceeding would go forward in the defendant's absence if the defendant failed to appear; written notice that the proceeding would go forward is sufficient notice.

State v. Bolding, 227 Ariz. 82, 253 P.3d 279, ¶¶ 18–20 (Ct. App. 2011) (although applying § 13–4033(C) (waiver of appeal by defendant's absence at time of sentencing) to defendant would not have violated *ex post facto* clause, there was no showing defendant knew his absenting himself would result in waiver of appeal, so any waiver of appeal would not have been knowing or voluntary).

RULE 10. CHANGE OF JUDGE OR PLACE OF TRIAL.

Rule 10.1(a) Change of judge for cause—Grounds.

10.1.a.010 A trial judge is presumed to be free of bias or prejudice; to overcome that presumption, a party must file a motion alleging specific grounds of impartiality, and prove by a preponderance of the evidence that the judge is biased and prejudiced against the party; bare allegations of bias and prejudice, unsupported by factual evidence, are insufficient to overcome the presumption.

Costa v. MacKey, 227 Ariz. 565, 261 P.3d 449, ¶¶ 11–13 (Ct. App. 2011) (defendant was charged with two counts of continuous sexual abuse of child; court held mere fact that trial court set bond at $75 million in cash was insufficient to meet defendant's burden).

Rule 10.3(b) Change of place of trial—Prejudicial pretrial publicity.

10.3.b.010 With pre-trial publicity, no presumption of prejudice exists unless the publicity is so unfair, so prejudicial, and so pervasive that the court cannot give credibility to the jurors' answers during voir dire.

State v. Bigger, 227 Ariz. 196, 254 P.3d 1142, ¶¶ 10–19 (Ct. App. 2011) (defendant was convicted of first-degree murder in murder-for-hire plot alleging co-defendant dentist paid defendant to kill competing dentist; defendant contended prejudice should have been presumed because of (1) extensive press coverage, (2) nature of crime and inaccuracy of some reports, (3) salacious details of co-defendant dentist and references to "hit-man," (4) victim's status in community, (5) defendant's trial being conducted after trial of co-defendant dentist, and (6) number of prospective jurors who had been exposed to pre-trial publicity; court held that, although pre-trial publicity was voluminous, (1) it was largely factual and non-inflammatory, (2) most occurred well in advance of defendant's trial, and (3) trial court made substantial efforts to ensure fair and unbiased jury, thus defendant failed to establish presumption of prejudice).

10.3.b.020 If a party is unable to show that the extent of the pre-trial publicity created a presumption of prejudice, the party is entitled to a change of venue only if the party is able to show that the publicity had such an actual effect on the prospective jurors that there is a reasonable probability the party will be deprived of a fair trial; to find actual prejudice, jurors must have formed preconceived notions of guilt they were unable to set aside.

State v. Bigger, 227 Ariz. 196, 254 P.3d 1142, ¶¶ 20–22 (Ct. App. 2011) (defendant was convicted of first-degree murder in murder-for-hire plot alleging co-defendant dentist paid defendant to kill competing dentist; defendant contended pre-trial publicity actually prejudiced jurors; court noted no seated juror admitted having formed any opinion about defendant's guilt and most jurors had only vague recollections about case and did not recall specifically defendant's involvement, and thus held defendant failed to establish actual prejudice).

ARTICLE IV. PRETRIAL PROCEDURES.

RULE 12. THE GRAND JURY.

Rule 12.6 Appearance of persons under investigation.

12.6.020 A person under investigation by the grand jurors may be permitted to appear on that person's written request; if the person informs the prosecutor that the person wishes to appear before the grand jurors or is sufficiently specific in showing the person has exculpatory evidence for the grand jurors, the prosecutor must inform the grand jurors of the request.

Bashir v. Pineda, 226 Ariz. 351, 248 P.3d 199, ¶¶ 7–22 (Ct. App. 2011) (defendant's 4-year-old son was found floating in family swimming pool and later died; defendant's attorney sent DCA 10-page letter detailing family history, son's health, details about incident, and investigation that differed from police report; subsequent e-mails specifically stated defendant would like to testify before grand jurors and further asked DCA to present exculpatory evidence contained in letter; DCA advised grand jurors only that defendant made written request to testify; court held DCA should have presented defendant's proposed evidence to grand jurors, and that error was not harmless because proposed testimony may have affected grand jurors' decision to indict).

Black v. Coker, 226 Ariz. 335, 247 P.3d 1005, ¶¶ 9–20 (Ct. App. 2011) (shortly after midnight, 12-year-old victim awoke to find person standing in her bedroom; victim recognized person as man who lived across street; at 4:22 p.m., defendant's attorney faxed letter to county attorney's office stating defendant wished to present testimony and other evidence to grand jurors; next day state presented case to grand jurors; DCA presenting case to grand jurors was not DCA named in letter sent by defendant's attorney; DCA did not inform grand jurors of defendant's request; court held that, even though letter did not provide any details about possible testimony, letter did make unequivocal request to appear and testify, thus state had duty to so inform grand jurors; court held error was harmless because court could not conceive of any testimony by defendant that would explain away contemplated charge, and because failure to inform grand jurors appeared to have been inadvertent).

Rule 12.9(b) Challenge to grand jury proceedings—Timeliness.

12.9.b.010 The defendant must file a motion to challenge the grand jury proceedings no later than 25 days after either the grand jury transcript and minutes are filed or the defendant is arraigned, whichever is later, and if a defendant does not file within the time limits, the defendant will have waived any objections to the grand jury proceedings.

State v. Merolle, 227 Ariz. 51, 251 P.3d 430, ¶¶ 2–15 (Ct. App. 2011) (because state failed to present exculpatory evidence to grand jury, trial court remanded for new determination of probable cause; before state re-presented case to grand jury, defendant participated in settlement conference, but no settlement was reached; when state re-presented case to grand jury, detective recounted statement defendant made during settlement conference, which conflicted with another statement defendant made, leaving implication one of defendant's statements was a lie; more than 4 months later, defendant filed motion to dismiss that second indictment, contending presenting defendant's statement from settlement conference violated Rule 17.4(f) and Rule 410; trial court held use of statement violated those rules, and recognized defendant's motion was untimely, but held it had inherent power to dismiss and did so; court held defendant's motion was untimely, which resulted in waiver of any challenge to grand jury proceedings, and further held trial court did not have inherent power to dismiss, and thus reversed trial court's order of dismissal).

RULE 13. INDICTMENT AND INFORMATION.

Rule 13.3(a) Joinder—Offenses.

13.3.a.015 A duplicative (duplicitous) indictment or information charges two or more distinct and separate offenses in a single count, while a duplicative (duplicitous) charge exists when the text of the indictment or information refers to only one criminal act, but the state introduces multiple alleged criminal acts to prove the charge.

State v. Cotton, 228 Ariz. 105, 263 P.3d 654, ¶¶ 3–6 (Ct. App. 2011) (indictment charged theft in violation of § 13–1802; trial court instructed jurors they could find defendant guilty if he violated subsection (A)(1) or subsection (A)(5); court stated theft is a single unified offense, thus defendant was not entitled to unanimous verdict on precise manner in which act was committed).

Rule 13.4(b) Severance—As of right.

13.4.b.020 For offenses that are joined because they are of the same or similar character, a defendant is not entitled to severance as a matter of right if evidence of one would be admissible at the trial of the other if the offenses were tried separately.

State v. Lehr, 227 Ariz. 140, 254 P.3d 379, ¶ 22 (2011) (because evidence of other murders and attempted murder would have been admissible in each trial if offenses were tried separately, trial court did not err in denying defendant's motion to sever counts).

Rule 13.5(b) Amendment of charges; defects in the charging document—Altering the charges; amendment to conform to the evidence.

13.5.b.070 The charging document may be deemed amended to correct mistakes of fact or to remedy formal or technical defects, but if the state charges an offense it cannot prove, the charging document is neither defective nor subject to amendment.

State v. Rivera, 226 Ariz. 325, 247 P.3d 560, ¶¶ 5–8 (Ct. App. 2011) (indictment charged defendant with shooting at named person, and state presented no evidence defendant intended to shoot at that person, thus evidence not sufficient to support that conviction; court rejected state's contention indictment was considered amended to charge shooting at others present).

RULE 15. DISCOVERY.

Rule 15.1(b)(5) Disclosure by state—Supplemental Disclosure; Scope—Papers, documents, photographs, or tangible objects.

15.1.b.5.010 No later than 10 days after arraignment, the state must disclose all evidence papers, documents, photographs, or tangible objects it intends to use in its case-in-chief.

State v. Trujillo, 227 Ariz. 314, 257 P.3d 1194, ¶¶ 22–29 (Ct. App. 2011) (in defendant's "pen pack," name at top of fingerprint page could not be read because of way pages were stapled together, and as result, on copy disclosed to defendant's attorney, defendant's name did not appear at top of fingerprint page; defendant contended state did not completely disclose document because his name did not appear on fingerprint page and that he was "blindsided, surprised, and substantially prejudiced" by this failure to disclose; court held state's disclosure was timely, rejected defendant's contention that every page in the pen pack must independently identify defendant, noted defendant's social security number was visible on fingerprint page, and noted defendant could have asked state to disclose new fingerprint page or could have inspected original; **question,** why did defendant need pen pack to discover he had spent time in prison as result of prior conviction?).

Rule 15.8 Disclosure prior to a plea deadline.

15.8.010 If the prosecution has offered a plea agreement without imposing a plea deadline, the prosecutor may withdraw the plea agreement at any time, and withdrawing the plea agreement is not the same as imposing a plea deadline for Rule 15.8 purposes.

Rivera-Longoria v. Slayton, 228 Ariz. 156, 264 P.3d 866, ¶¶ 17–22 (2010) (defendant was charged with child abuse; first prosecutor provided 1,144 pages of disclosure and offered plea with no deadline; defendant declined plea offer; after *Donald* hearing, defendant asked whether plea was still available, and prosecutor said it was, but said that, if case did not settle, new prosecutor would assume case and plea might not be available; approximately 1 month later, new prosecutor assumed case, withdrew plea offer, and provided approximately 11,000 more pages of disclosure; court held withdrawal of plea offer was not same as deadline, and remanded case for further proceedings).

RULE 16. PRETRIAL MOTION PRACTICE; OMNIBUS HEARING.

Rule 16.2(b) Procedure on pretrial motions to suppress evidence—Burden of proof on pretrial motions to suppress evidence.

16.2.b.010 If the state obtained the evidence either by (1) confession or (2) search and seizure, and either (1) Rule 15 allows the defendant to discover the circumstances of obtaining of the evidence, (2) defendant's attorney was present when the evidence was obtained, or (3) the state obtained the evidence pursuant to a search warrant, the defendant has the burden of going forward with specific facts showing the evidence should be suppressed.

State v. Peterson, 228 Ariz. 405, 267 P.3d 1197, ¶¶ 11–15 (Ct. App. 2011) (during questioning by detective, defendant said, "I don't have anything else to say about how it all happened"; defendant contended that was invocation of *Miranda* rights, and defendant contended trial court erred in denying her motion to suppress her statements without holding hearing; court held defendant made sufficient showing her statements should be suppressed, and thus trial court was required to hold hearing; court remanded for trial court to hold hearing).

16.2.b.020 Because a statement by a defendant is considered prima facie involuntary, all a defendant must do is file a motion stating the specific factual ground supporting the claim that the obtaining of the evidence was unlawful, at which point the state will then have the burden of proving that the statement was voluntary.

State v. Peterson, 228 Ariz. 405, 267 P.3d 1197, ¶ 17 (Ct. App. 2011) (defendant contended trial court erred in denying her motion to suppress her statements without holding hearing; because defendant contended her statements were involuntary, and because statement by defendant is considered prima facie involuntary, trial court was required to hold hearing, and remanded for trial court to hold hearing).

ARTICLE V. PLEAS OF GUILTY AND NO CONTEST.

RULE 17. PLEAS OF GUILTY AND NO CONTEST.

Rule 17.1(e) Pleading by defendant—Waiver of appeal.

17.1.e.070 If a defendant pleads guilty and is placed on probation, if the State files a petition to revoke probation and the defendant admits the violation, the defendant may not appeal from the subsequent judgment and sentence, but if the defendant contests the violation and the State proves the violation after a contested hearing, the defendant may appeal from the subsequent judgment and sentence.

State v. Regenold, 226 Ariz. 378, 249 P.3d 337, ¶¶ 5–8 (2011) (defendant pled guilty and trial court suspended imposition of sentence and placed him on probation; state petitioned to revoke probation; after contested probation violation hearing, trial court found defendant had violated probation and sentenced him to prison; court held defendant was seeking review from contested hearing and not from plea agreement, thus defendant had right to appeal).

Rule 17.2 Duty of court to advise defendant of his rights and of the consequences of pleading guilty or no contest.

17.2.010 When a defendant submits the matter on the record, the trial court must determine that the defendant waives the following rights: (1) to a jury trial where the defendant is represented by counsel; (2) to have issue of guilt based on live testimony rather than on stipulated record; (3) to testify on own behalf; (4) to be confronted by adverse witnesses; and (5) to have compulsory process to obtain witnesses; and (6) trial court must advise the defendant of the range of sentence and any special conditions of sentencing.

State v. Bunting, 226 Ariz. 572, 250 P.3d 1201, ¶¶ 5–12 (Ct. App. 2011) (defendant disclosed defense of guilty but insane; defendant executed waiver of jury trial (*Avila* #1); as trial court prepared to discuss presentation of evidence presumably for hearing on insanity, defendant's attorney asked trial court if it intended to rule on issue of defendant's guilt; trial court noted it had received stipulation from parties and stated that, on basis of police reports submitted by parties, it found defendant guilty; after hearing on insanity defense, trial court then found defendant failed to establish she was insane; court held trial court failed to advise defendant it would determine guilt on stipulated record (*Avila* #2) (court did not mention *Avila* ##3–6), and remanded for an evidentiary hearing "to determine whether Bunting would have agreed to submit her case to the judge if a proper colloquy had been conducted").

ARTICLE VI. TRIAL.

RULE 18. TRIAL BY JURY; WAIVER; SELECTION AND PREPARATION OF JURORS.

Rule 18.1(b) Trial by jury—Waiver.

18.1.b.010 In superior court, for a defendant to waive the right to a jury trial, the court must advise defendant of the right to a jury trial and ascertain that the waiver is knowing, voluntary, and intelligent, and obtain either a written waiver or a verbal waiver in open court on the record.

State v. Innes, ___ Ariz. ___, 260 P.3d 1110, ¶¶ 2–9 (Ct. App. 2011) (defendant's attorney asked for bench trial, and state did not oppose request; on appeal, defendant moved to stay appeal and remand to determine whether defendant knowingly, voluntarily, and intelligently waived right to jury trial; on remand, trial court found there was not any formal discussion of waiver and no written waiver; court held it was structural error when record does not show that defendant made knowing, voluntary, and intelligent waiver of right to jury trial).

18.1.b.020 The failure of the trial court to notify and explain to a defendant the right to a jury trial and obtain a knowing, intelligent, and voluntary waiver of that right is structural error.

State v. Innes, ___ Ariz. ___, 260 P.3d 1110, ¶¶ 2–9 (Ct. App. 2011) (defendant's attorney asked for bench trial, and state did not oppose request; on appeal, defendant moved to stay appeal and remand to determine whether defendant knowingly, voluntarily, and intelligently waived right to jury trial; on remand, trial court found there was not any formal discussion of waiver and no written waiver; court held it was structural error when record does not show that defendant made knowing, voluntary, and intelligent waiver of right to jury trial).

Rule 18.4(b) Challenges—Challenges for cause.

18.4.b.060 A prospective juror is disqualified by law from sitting on a jury if the prospective juror is interested directly or indirectly in the matter under investigation.

State v. Eddington, 228 Ariz. 361, 266 P.3d 1057, ¶¶ 7–19 (2011) (court held peace officer who is currently employed by same agency, office, or department that conducted investigation in criminal case is interested person in case and must therefore be stricken for cause; in this case, prospective juror was sheriff's deputy who was employed by same sheriff's department that investigated case, knew six or seven of State's 14 potential witnesses from that sheriff's department, including lead detective, and was currently assigned to provide security for county superior court and thus knew why there were two security officers in courtroom; court held trial court should have stricken that prospective juror for cause even though deputy repeatedly avowed he could be fair and impartial and would not treat testimony of law enforcement officers differently from any other witness).

18.4.b.170 If the trial court refuses to strike a juror for cause or fails to remove a juror *sua sponte* and the defendant does not use a peremptory strike to remove that juror, the defendant waives the issue on appeal.

State v. Smith, 228 Ariz. 126, 263 P.3d 675, ¶¶ 5–7 (Ct. App. 2011) (defendant contended trial court erred in not removing juror *sua sponte* because it appeared juror had difficulty hearing; court held defendant should have used peremptory strike to remove that juror, and because defendant did not do so, defendant waived issue).

RULE 19. TRIAL.

Rule 19.1(a)(5) Conduct of trial—Order of proceedings—The defendant's case.

19.1.a.510 A trial court need not determine on the record whether a defendant has knowingly and voluntarily waived the right to testify.

State v. Prince, 226 Ariz. 516, 250 P.3d 1145, ¶¶ 41–43 (2011).

19.1.a.520 Although a trial court need not determine on the record whether a defendant has knowingly and voluntarily waived the right to testify, it may be prudent for a trial court to do so in an appropriate case..

State v. Prince, 226 Ariz. 516, 250 P.3d 1145, ¶¶ 45–47 (2011) (defendant contended on-the-record waiver was required because of his low IQ and his multiple motions to change counsel; court noted defendant never hesitated to assert his legal rights and filed numerous motions, and nothing in record suggested he was led to believe he could not testify; thus because defendant did not invoke his right to testify, he "cannot now be heard to complain" on appeal).

Rule 19.1(mmt) Conduct of trial—Motion for mistrial.

19.1.mmt.070 A defendant is entitled to a mistrial based on **juror** misconduct only if the defendant either shows actual prejudice or if prejudice may be fairly presumed from the facts.

State v. Manuel, ___ Ariz. ___, ___ P.3d ___, ¶¶ 37–41 (Dec. 21, 2011) (after lunch on last day of trial before Labor Day weekend, one juror gave bailiff note saying he thought another juror was drunk; after 20 minutes of testimony, trial court recessed and questioned juror, who admitted having glass of bourbon over lunch; trial court admonished entire jury not to drink alcohol, and recessed for weekend; when trial resumed, trial court allowed defendant to repeat matters covered in that 20 minutes; court held trial court acted appropriately and that defendant failed to show prejudice).

State v. Lehr, 227 Ariz. 140, 254 P.3d 379, ¶¶ 43–50 (2011) (after state's DNA expert finished after 2 days of testimony, several jurors applauded; upon questioning jurors who applauded, jurors 1, 3, and 5 said they did so because of witness's performance, and jurors 8 and 9 said it was because witness finally finished; all jurors questioned said their minds had not been made up and they could still be fair and impartial; juror 5 also gave "thumbs up" sign to victim E.R.; upon questioning, juror 5 said she did so because she felt sorry for E.R.; parties stipulated to removing juror 5 for cause, and juror 3 was later selected as alternate; therefore, of jurors who clapped, only jurors 1, 8, and 9 participated in deliberations; court held defendant failed to show any prejudice, and that trial court did not abuse discretion in denying defendant's motion for mistrial).

19.1.mmt.100 To determine whether the **prosecutor's** remarks or actions were so objectionable as to require a mistrial, the trial court must consider (1) whether the remarks or actions call to the attention of the jurors matters that they would not be justified in considering, and (2) the probability that the jurors, under the circumstances of the case, were influenced; further, the defendant must show the offending statements were so pronounced and persistent that they permeated the entire atmosphere of the trial and so infected the trial with unfairness that they made the resulting conviction a denial of due process.

State v. Manuel, ___ Ariz. ___, ___ P.3d ___, ¶¶ 28–32 (Dec. 21, 2011) (prosecutor cross-examined defense mitigation expert about how much he had received from testifying for defendants in capital cases; court held it was not improper to question witness about compensation received, but it was improper to intimate witness reached conclusions merely for pecuniary gain; because defendant did not object, court reviewed for fundamental error only, and concluded defendant had not shown prejudice sufficient to constitute fundamental error).

State v. Bonfiglio, 228 Ariz. 349, 266 P.3d 375, ¶¶ 9–14 (Ct. App. 2011) (in light of defense argument that it was not credible that only one witness testified defendant admitted stabbing victim when there were others nearby, and testimony and transcript of jail calls indicating defendant asked friend to talk to other persons who were at party where stabbing occurred, prosecutor's rebuttal argument that transcript of jail calls was "good explanation of why there aren't more people here to tell us about that night" was not improper; court uses "pronounced and persistent" and "denial of due process" language).

19.1.mmt.230 The cumulative error doctrine does apply to claims of prosecutorial misconduct because, even if the several actions are not errors in and of themselves, they may show that the prosecutor intentionally engaged in improper conduct and did so either with indifference or with the specific intent to prejudice the defendant.

State v. Manuel, ___ Ariz. ___, ___ P.3d ___, ¶ 33 (Dec. 21, 2011) (court held prosecutor's comments did not show pervasive misconduct that deprived defendant of fair trial).

Rule 19.3(c) Evidence—Prior recorded testimony.

19.3.c.030 The state may use at trial the testimony of a witness from a prior trial if the defendant was a party and had the right and the opportunity to cross-examine the witness, and the witness is now unavailable.

State v. Lehr, 227 Ariz. 140, 254 P.3d 379, ¶¶ 27–35 (2011) (at pretrial hearing before retrial, victim T.H. testified she would not testify against defendant because she opposed capital punishment; trial court threatened her with contempt, including jail for up to 6 months; T.H. said putting her in jail or fining her would not change her mind; court held trial court did not abuse discretion in finding T.H. was unavailable and allowing admission of her testimony from first trial).

RULE 20. JUDGMENT OF ACQUITTAL.

Rule 20(b) Judgment of acquittal—After verdict.

20.b.020 The standards for ruling on a pre- and post-verdict motions for judgment of acquittal are the same: whether the record contains substantial evidence to warrant a conviction; thus if the trial court has denied a pre-verdict motion for judgment of acquittal, the trial court is not precluded from ruling on a post-verdict motion for judgment of acquittal based on a review of the same evidence previously considered.

State v. West, 226 Ariz. 559, 250 P.3d 1188, ¶¶ 14–18 (2011) (after trial court denied defendants' Rule 20 motions both at end of State's case and after presentation of all evidence and jurors returned guilty verdicts, trial court granted defendants' renewed Rule 20 motion; court of appeals followed *State ex rel. Hyder v. Superior Ct. (Clifton),* 128 Ariz. 216, 624 P.2d 1264 (1981), and held that, because trial court neither found it had previously erred in considering improper evidence nor identified any other legal error affecting quantum of evidence, trial court erred in granting renewed Rule 20 motion; Arizona Supreme Court disapproved *Hyder (Clifton),* and held same standard applied to both pre- and post-verdict motions for judgment of acquittal, and thus remanded to court of appeals for reconsideration under proper standard).

RULE 21. INSTRUCTIONS.

Rule 21.1 Applicable law.

Intoxication—Driving while under influence.

21.1.236 A.R.S. § 28–1381(A)(1) prohibits a person from driving or actual physical control of a vehicle while under the influence if the person is impaired to the slightest degree; it does not require that the person's ability to drive a vehicle is impaired.

State v. Miller (Oliveri), 226 Ariz. 190, 245 P.3d 454, ¶¶ 4–10 (Ct. App. 2011) (court held RAJI 28.1381(A)(1)–1, which includes language that "defendant's ability to drive a vehicle was impaired to the slightest degree" was incorrect statement of law).

Lesser-included offenses.

21.1.320 Although the trial court must instruct on the offense charged and any offense necessarily included in the charged offense, if there is no evidence to support a lesser-included offense, the trial court should not give a lesser-included offense instruction.

State v. Delahanty, 226 Ariz. 502, 250 P.3d 1131, ¶¶ 22–27 (2011) (defendant was charged with first-degree murder for intentional or knowing killing of police officer; defendant contended trial court abused discretion in not instructing on second-degree murder, manslaughter, and negligent homicide; because victim was in full police uniform and defendant shot him three times in face at close range, and because defendant had said that, if he were ever pulled over by officer, he would shoot and kill him, there was no evidence supporting lesser-included offense).

State v. Sprang, 227 Ariz. 10, 251 P.3d 389, ¶¶ 5–14 (Ct. App. 2011) (while lying on bed face up, victim was hit in head with lid from toilet tank, which first had to be retrieved from bathroom, and was strangled while either upright or lying face down; because these two different methods of killing show planning or at least reflection, evidence showed killing would have been first-degree murder, thus trial court erred in giving instruction on second-degree murder over defendant's objection).

13–1105 First-degree murder—Premeditated murder.

21.13.1105.010 To prove premeditated first-degree murder, the state must prove to the jurors beyond a reasonable doubt the defendant actually reflected; to the extent the statute provides that "proof of actual reflection is not required," that only means proof by direct evidence is not required, thus the state may prove reflection by circumstantial evidence, such as the passage of time; in future cases, trial courts should instruct the jurors as follows: "Premeditation" means

the defendant intended to kill another human being [knew he/she would kill another human being], and that after forming that intent [knowledge], reflected on the decision before killing; it is this reflection, regardless of the length of time in which it occurs, that distinguishes first-degree murder from second-degree murder; an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

State v. Lehr, 227 Ariz. 140, 254 P.3d 379, ¶¶ 51–59 (2011) (trial court gave above instruction with added language: "The time needed for reflection is not necessarily prolonged, and the space of time between the intent or knowledge to kill and the act of killing may be very short"; court noted it had stated trial court should use that language only when facts of case require it, noted victims were killed by blunt force trauma to head and bloody rocks were nearby that likely were used to kill victims, and noted state argued in closing circumstantial evidence supported finding of premeditation; court held giving of that instruction was permissible based on circumstantial evidence presented and state's proper closing argument).

ARTICLE VII. POST-VERDICT PROCEEDINGS.

RULE 27. PROBATION AND PROBATION REVOCATION.

Rule 27.4 Early termination of probation.

27.4.030 The court may terminate the period of probation or intensive probation and discharge the defendant at a time earlier than originally imposed if, in the court's opinion, the ends of justice will be served and if the conduct of the defendant on probation warrants it.

State v. Lewis, 226 Ariz. 124, 244 P.3d 561, ¶¶ 8–17 (2011) (on 9/15/03, defendant was placed on probation for 5 years; on 9/03/08, defendant's probation officer filed petition to terminate defendant's probation; although defendant was delinquent 245 hours of community service, had paid only $4,200 toward the $6,600 in fines and fees, and had violated probation three times, because defendant had completed 180 days in inpatient drug rehabilitation program and had remained drug-free, had completed 347 hours of community service, had married and had two children, attended church regularly, completed vocational training, and had maintained steady employment with same company for 2 years, trial court did not abuse discretion in terminating defendant's probation and designating it as "unsuccessful" termination).

Rule 27.6(a) Initiation of revocation proceedings; securing the probationer's presence; notice—Petition to revoke probation.

27.6.a.010 The principles that apply to duplicative (duplicitous) indictments or informations do not apply to petitions to revoke probation.

State v. Broman, 228 Ariz. 302, 265 P.3d 1101, ¶¶ 4–7 (Ct. App. 2011) (state filed petition to revoke defendant's probation alleging in single count defendant had "unlawfully possess[ed] child pornography (10 counts)," and state introduced over 40 images of child pornography found on defendant's computer).

Rule 27.8(c) Revocation of probation—Disposition hearing.

27.8.c.010 Because statute gives the trial court broad discretion to terminate probation, if Rule 27.8(c)(2), which provides that the trial court may revoke, modify, or continue probation if it determines the defendant had violated probation, were read to prohibit a trial court from terminating probation despite its conclusion that the ends of justice would be served and the conduct of the defendant warrants it, the rule would exceed the court's rule-making powers.

State v. Lewis, 226 Ariz. 124, 244 P.3d 561, ¶¶ 8–10 (2011) (although defendant had violated probation three times over 5-year period and still owed part of fines and fees ordered, because evidence showed defendant had done numerous things that indicated rehabilitation, trial court did not exceed authority in terminating defendant's probation and designating it as "unsuccessful" termination).

ARTICLE VIII. APPEAL AND OTHER POST-CONVICTION RELIEF.

RULE 31. APPEAL FROM SUPERIOR COURT.

Rule 31.3 Time for taking appeal.

31.3.010 The 20-day time limit for the filing of a notice of appeal is jurisdictional, and the failure to file a notice within that time deprives the appellate court of the jurisdiction to do anything other than dismiss the appeal.

State v. Limon, ___ Ariz. ___, ___ P.3d ___, ¶¶ 4–9 (Ct. App. Dec. 21, 2011) (on 1/20/2011, trial court granted defendant's motion to suppress; state filed motion for reconsideration, which trial court denied 3/23/2011; on 3/30/2011, state filed notice of appeal from trial court's 1/20 order and 3/23 denial of motion for reconsideration; court held state had no right to appeal from order denying motion for reconsideration, and held 3/30/2011 notice of appeal was untimely for 1/20/2011 order granting motion to suppress).

RULE 32. OTHER POST-CONVICTION RELIEF.

Rule 32.1 Scope of remedy.

Rule 32.1(f) Scope of remedy—Failure to appeal.

32.1.f.010 This section gives a defendant the right to file a delayed appeal or a delayed petition for post-conviction relief if the failure to file in a timely manner was without fault in the defendant's part.

State v. Flores, ___ Ariz. ___, 260 P.3d 309, ¶¶ 3–7 (Ct. App. 2011) (defendant was noncitizen legal resident of the U.S.; defendant was convicted of attempted possession of narcotic drug for sale, and his probation was terminated in September 2008; in 2009, immigration attorney informed him he was subject to deportation because of his conviction; in December 2010, defendant filed petition for post-conviction relief contending *Padilla v. Kentucky* was significant change in law and his attorney provided ineffective assistance of counsel by not advising him of immigration consequences of guilty plea; court noted trial court informed him of right to file petition for post-conviction relief and he was not claiming anyone interfered with his desire to file a timely petition; court characterized defendant's claim as regretting having failed to challenge his conviction based on information that later came to light, which court held was not cognizable under this rule).

Rule 32.1(g) Scope of remedy—Significant change in the law.

32.1.g.110 In the interest of finality, new rules of criminal procedure do not apply retroactively unless **one of two** factors is present: **First,** the new rule places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.

State v. Flores, ___ Ariz. ___, 260 P.3d 309, ¶ 15 (Ct. App. 2011) (defendant was noncitizen legal resident of the U.S.; defendant pled to narcotic offense and probation was terminated in 2008; in 2009, immigration attorney told him he was subject to deportation because

of his conviction; in 2010, defendant filed petition for post-conviction relief contending *Padilla v. Kentucky* was significant change in law and his attorney provided ineffective assistance of counsel by not advising him of immigration consequences of guilty plea; court agreed *Padilla* was significant change in law, but held it would not apply to defendant unless it came within narrow *Teague* exceptions; court held first *Teague* factor did not apply).

32.1.g.120 In the interest of finality, new rules of criminal procedure do not apply retroactively unless **one of two** factors is present: **Second,** the new rule announced is a watershed rule of criminal procedure that is implicit in the concept of ordered liberty, which in turn requires **two** showings: **First,** infringement of the rule must *seriously* diminish the likelihood of obtaining an accurate conviction.

State v. Flores, ___ Ariz. ___, 260 P.3d 309, ¶¶ 15–16 (Ct. App. 2011) (defendant was noncitizen legal resident of the U.S.; defendant pled to narcotic offense and probation was terminated in 2008; in 2009, immigration attorney told him he was subject to deportation because of his conviction; in 2010, defendant filed petition for post-conviction relief contending *Padilla v. Kentucky* was significant change in law and his attorney provided ineffective assistance of counsel by not advising him of immigration consequences of guilty plea; court agreed *Padilla* was significant change in law, but held it would not apply to defendant unless it came within narrow *Teague* exceptions; court held second *Teague* factor did not apply).

Rule 32.2(a) Preclusion of remedy—Preclusion.

32.2.a.040 A defendant may not obtain relief on any ground that defendant has waived in a previous collateral proceeding by not presenting that claim.

State v. Martinez, 226 Ariz. 464, 250 P.3d 241, ¶¶ 6–8 (Ct. App. 2011) (defendant pled guilty and filed of-right (first) petition for post-conviction relief; trial court granted partial relief and ordered defendant resentenced; defendant filed petition for review and appellate court affirmed trial court; before resentencing, defendant filed second petition for post-conviction relief raising claims relating to voluntariness of plea agreement and state's breach of plea agreement, and claimed both trial attorney and attorney for first PCR provided ineffective assistance of counsel; court held defendant had right to raise claim that attorney for first PCR provided ineffective assistance of counsel, but that he could have raised all other claims in first PCR, thus they were precluded).

32.2.a.070 When a defendant pleads guilty, the defendant has the right to file a first petition for post-conviction relief addressing all claims of error in the plea proceedings, including a claim that trial counsel provided ineffective assistance of counsel; the defendant also has the right to file a second petition for post-conviction relief to raise a claim that counsel in the first petition for post-conviction relief provided ineffective assistance of counsel.

State v. Martinez, 226 Ariz. 464, 250 P.3d 241, ¶¶ 9–12 (Ct. App. 2011) (defendant pled guilty and filed of-right (first) petition for post-conviction relief; trial court granted partial relief and ordered defendant resentenced; defendant filed petition for review and appellate court affirmed trial court; before resentencing, defendant filed second petition for post-conviction relief raising claims relating to voluntariness of plea agreement and state's breach of plea agreement, and claimed both trial attorney and attorney for first PCR provided ineffective assistance of counsel; court held defendant had right to raise claim that attorney for first PCR provided ineffective assistance of counsel, but that he could have raised all other claims in first PCR, thus they were precluded).

Rule 32.2(b) Preclusion of remedy—Exceptions.

32.2.b.070 When a defendant raises a claim under Rules 32.1(d), (e), (f), (g), or (h) in a successive or untimely post-conviction relief proceeding, the defendant must set forth in the notice of post-conviction relief the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner, and if the specific exception and meritorious reasons do not appear sufficient, the court shall summarily dismiss the notice, and nothing in Rule 32.4.(c)(2) requires that the trial court appoint counsel for the defendant before conducting such review.

State v. Harden, 228 Ariz. 131, 263 P.3d 680, ¶¶ 4–12 (Ct. App. 2011) (defendant pled guilty to child molestation in April 2010, and filed notice of post-conviction relief in March 2011; trial court found defendant's explanation for untimely filing as not sufficient and dismissed notice; court rejected defendant's contention that trial court was required to appoint counsel for him prior to reviewing notice to see if explanation for late filing was sufficient).

Rule 32.4(c) Commencement of proceedings—Appointment of counsel.

32.4.c.040 Because a petition for post-conviction relief is the only means a defendant has to challenge a conviction resulting from a guilty plea, there is a constitutional right to assistance of counsel in the first post-conviction relief proceeding challenging that conviction, and because a pleading defendant may raise a claim of ineffective assistance of counsel only in a second petition for post-conviction relief, the defendant is entitled to appointed counsel in that second petition for post-conviction relief.

Osterkamp v. Browning, 226 Ariz. 485, 250 P.3d 551, ¶¶ 7–20 (Ct. App. 2011) (defendant pled guilty and filed timely petition for post-conviction relief, and trial court granted partial relief; within 30 days of that order, defendant filed second petition for post-conviction relief and asked for appointment of counsel; because this was only opportunity defendant had to raise claim of ineffective assistance of counsel of attorney in first petition for post-conviction relief, court held trial court erred in not appointing counsel).

ARTICLE X. ADDITIONAL RULES.

SPECIAL ACTIONS.

Rule 1 Nature of the special action.

1.sa.021 Arizona courts have found laches to be the only restriction on the time for filing a petition for special action.

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶ 7 (Ct. App. 2011) (issue was whether victims in criminal proceeding (for fraudulent schemes and artifices, theft, illegally conducting enterprise, and money laundering) could refuse request of defendants in criminal proceeding for deposition in parallel civil (forfeiture) proceeding; trial court denied state's motion for protective order on 5/24; depositions were scheduled for 9/20; trial court denied state's third motion for protective order and for stay of deposition on 10/01; state filed petition for special action on 10/04; because various motions relating to deposition were pending and because of amended notices of deposition, court held state did not unreasonably delay filing petition).

1.sa.048 The Rules of Procedure for Special Actions do not authorize a cross-petition, thus if a party has filed a petition for special action challenging the action of the trial court, and the other party wants to challenge a different action of the trial court, that other party will have to file its own petition for special action.

Costa v. MacKey, 227 Ariz. 565, 261 P.3d 449, ¶ 14 (Ct. App. 2011) (defendant filed petition for special action challenging trial court's order setting bond at $75 million cash; in state's response, it challenged trial court's ruling that offense with which defendant was charged was bail-eligible; court noted state did not label its response as "cross-petition," and even if it had, rules of procedure for special actions do not provide for cross-petition, thus state would have to file its own petition for special action to challenge trial court's ruling).

1.sa.100 Special action review **is available** when the party does not have an equally plain, speedy, and adequate remedy by appeal.

Phoenix Child. Hosp. v. Grant, 228 Ariz. 235, 265 P.3d 417, ¶ 6 (Ct. App. 2011) (in medical malpractice case, plaintiff sued hospital and particular nurse; trial court entered order that patient-physician privilege precluded hospital's counsel from communicating with hospital employees who had treated plaintiff, other than hospital employees for whom plaintiff was making claim of negligence; court noted hospital had no equally plain, speedy, and adequate remedy by appeal to challenge trial court's order, thus accepted special action review).

Rasmussen v. Munger, ___ Ariz. ___, 260 P.3d 296, ¶ 3 (Ct. App. 2011) (because there was no remedy by appeal to review denial of motion for release from jail while on probation, court accepted special action jurisdiction).

Haag v. Steinle, 227 Ariz. 212, 255 P.3d 1016, ¶ 5 (Ct. App. 2011) (because issue of pretrial release would become moot if not reviewed by special action, court accepted special action jurisdiction).

State ex rel. Smith v. Reeves (Aguirre), 226 Ariz. 419, 250 P.3d 196, ¶ 9 (Ct. App. 2011) (there was no equally plain, speedy and adequate remedy for parents of child killed in hit-and-run to review trial court's order that child was not victim and they were not entitled to assert rights under Victim's Bill of Rights).

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶ 2 (Ct. App. 2011) (issue was whether victims in criminal proceeding (involving fraudulent schemes and artifices, theft, illegally conducting enterprise, and money laundering) could refuse request of defendants in criminal proceeding for deposition in parallel civil (forfeiture) proceeding).

1.sa.125 Special action review is available to challenge the **ruling on a motion to remand or for a new finding of probable cause.**

Bashir v. Pineda, 226 Ariz. 351, 248 P.3d 199, ¶ 6 (Ct. App. 2011) (defendant's 4-year-old son was found floating in family swimming pool and later died; defendant's attorney sent DCA 10-page letter detailing family history, son's health, details about incident, and investigation that differed from police report; subsequent e-mails specifically stated defendant would like to testify before grand jurors and further asked DCA to present exculpatory evidence contained in letter; DCA advised grand jurors only that defendant made written request to testify; trial court denied defendant's motion for remand; court stated petition for special action was only means of appellate review of trial court's ruling).

Black v. Coker, 226 Ariz. 335, 247 P.3d 1005, ¶ 8 (Ct. App. 2011) (defendant's attorney faxed letter to county attorney's office stating defendant wished to present testimony and other evidence to grand jurors; DCA did not inform grand jurors of defendant's request; trial court denied defendant's motion for remand; court stated petition for special action was only means of appellate review of trial court's ruling).

1.sa.145 Special action review is available to challenge a defendant's **conditions of release.**

Brewer v. Rees, 228 Ariz. 254, 265 P.3d 436, ¶ 4 (Ct. App. 2011) (state charged defendant with committing new drug offenses while he was released to participate in deferred prosecution program for two older drug offenses; court accepted special action review and held trial court properly ruled defendant was not eligible to be released on bail for new offense).

Costa v. MacKey, 227 Ariz. 565, 261 P.3d 449, ¶ 6 (Ct. App. 2011) (defendant filed petition for special action challenging trial court order setting bond at $75 million cash; court noted issues involving release would be moot once trial was concluded).

Haag v. Steinle, 227 Ariz. 212, 255 P.3d 1016, ¶ 5 (Ct. App. 2011) (issue of pretrial release would become moot if not reviewed by special action, so court accepted special action).

1.sa.155 Special action review is available to challenge a **discovery request, question of confidentiality, or ruling that a privilege either did or did not apply.**

Phoenix Child. Hosp. v. Grant, 228 Ariz. 235, 265 P.3d 417, ¶ 6 (Ct. App. 2011) (in medical malpractice case, plaintiff sued hospital and particular nurse; trial court entered order that patient-physician privilege precluded hospital's counsel from communicating with hospital employees who had treated plaintiff, other than hospital employees for whom plaintiff was making claim of negligence; court noted hospital had no equally plain, speedy, and adequate remedy by appeal to challenge trial court's order, thus accepted special action review).

1.sa.190 Special action review is available to challenge the trial court's ruling on whether a **victim does or does not have to give an interview or testify.**

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶ 2 (Ct. App. 2011) (issue was whether victims in criminal proceeding (involving fraudulent schemes and artifices, theft, illegally conducting enterprise, and money laundering) could refuse request of defendants in criminal proceeding for deposition in parallel civil (forfeiture) proceeding).

1.sa.210 Special action review is available to challenge an **order prior to entry of a final judgment when there is no right to appeal or no adequate remedy by appeal.**

State ex rel. Montgomery v. Duncan (Fries), ___ Ariz. ___, ___ P.3d ___, ¶ 1 (Ct. App. Dec. 27, 2011) (because state could not appeal if defendant were acquitted, court accepted special action jurisdiction to review trial court's ruling that defendant could question 15-year-old victim about her prior sexual conduct).

Osterkamp v. Browning, 226 Ariz. 485, 250 P.3d 551, ¶ 4 (Ct. App. 2011) (defendant had no adequate remedy by appeal to challenge trial court's order denying request for counsel in second petition for post-conviction relief wherein he wanted to raise claim that attorney in of-right (first) petition for PCR provided ineffective assistance of counsel).

1.sa.211 Special action review is available to challenge an **interlocutory order prior to entry of a final judgment.**

State ex rel Montgomery v. Whitten (Martinez), 228 Ariz. 17, 262 P.3d 238, ¶ 6 (Ct. App. 2011) (more than two dozen physicians and health care professionals treated 7-week-old victim for massive brain injury and skull fractures; when victim died, state charged defendant with murder; state disclosed it would call eight of the physicians as witnesses; court entered order that state would have to pay six of them as expert witnesses; state was not able to appeal from this interlocutory order, thus special action review was appropriate).

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶ 2 (Ct. App. 2011) (issue was whether victims in criminal proceeding (involving fraudulent schemes and artifices, theft, illegally conducting enterprise, and money laundering) could refuse request of defendants in criminal proceeding for deposition in parallel civil (forfeiture) proceeding).

Lear v. Fields, 226 Ariz. 226, 245 P.3d 911, ¶ 6 (Ct. App. 2011) (court accepted special action to review trial court's ruling that A.R.S. § 12–2203 (Arizona *Daubert*) was unconstitutional).

1.sa.300 Special action is appropriate when the matter (1) involved only a legal question, (2) was of first impression, (3) was of statewide importance, (4) was likely to recur, or (5) had received inconsistent decisions by different trial courts.

Phoenix Child. Hosp. v. Grant, 228 Ariz. 235, 265 P.3d 417, ¶ 6 (Ct. App. 2011) (when plaintiff sued hospital and certain employees in medical malpractice case, whether patient-physician privilege precluded hospital's counsel from communicating with hospital employees who had treated plaintiff, other than hospital employees for whom plaintiff was making claim of negligence, and (3) was of statewide importance and (4) was likely to recur).

State ex rel Montgomery v. Whitten (Martinez), 228 Ariz. 17, 262 P.3d 238, ¶ 6 (Ct. App. 2011) (whether physicians who treated 7-week-old victim for massive brain injury and skull fractures were fact witnesses or expert witnesses (1) involved only a legal question, (2) was of first impression, and (3) was of statewide importance).

Rasmussen v. Munger, ___ Ariz. ___, 260 P.3d 296, ¶ 3 (Ct. App. 2011) (trial court placed defendant on probation for two consecutive 7-year terms, and as condition of probation, serve two consecutive 1-year terms in jail; whether defendant was entitled to be released from jail after serving first 1-year term in jail (1) involved only a legal question).

Haag v. Steinle, 227 Ariz. 212, 255 P.3d 1016, ¶ 5 (Ct. App. 2011) (whether trial court could release defendant charged with bailable sex offense to location where there was no electronic monitoring available (1) involved only a legal question, (2) was of first impression, (3) was of statewide importance, and (4) was likely to recur).

State ex rel. Smith v. Reeves (Aguirre), 226 Ariz. 419, 250 P.3d 196, ¶ 9 (Ct. App. 2011) (whether child killed in hit-and-run was victim and thus whether child's parents were entitled to assert rights under Victim's Bill of Rights (1) involved only a legal question).

Bashir v. Pineda, 226 Ariz. 351, 248 P.3d 199, ¶ 6 (Ct. App. 2011) (extend of state's duty when defendant requests either to testify or to present evidence to grand jurors (3) was of statewide importance, and (4) was likely to recur).

Black v. Coker, 226 Ariz. 335, 247 P.3d 1005, ¶ 8 (Ct. App. 2011) (extend of state's duty when defendant requests either to testify or to present evidence to grand jurors (3) was of statewide importance, and (4) was likely to recur).

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶ 2 (Ct. App. 2011) (whether victims in criminal proceeding (involving money offense) could refuse request of defendants in those criminal proceeding for deposition in parallel civil (forfeiture) proceeding (1) involved only a legal question, (2) was of first impression, and (3) was of statewide importance).

Lear v. Fields, 226 Ariz. 226, 245 P.3d 911, ¶ 6 (Ct. App. 2011) (whether A.R.S. § 12–2203 (Arizona *Daubert*) was unconstitutional (1) involved only legal question, (2) was of first impression, (3) was of statewide importance, and (4) was likely to recur).

Rule 2(a)(2) Parties—Victims.

2.a.2.sa.010 This rule expressly authorizes victims to preserve their rights under the Victim's Bill of Rights by special action proceedings.

Winterbottom v. Ronan, 227 Ariz. 364, 258 P.3d 182, ¶4 (Ct. App. 2011) (Winterbottom (W.) pled guilty to attempted molestation of his two step-daughters; step-daughters, through their mother, filed suit against W. for tort damages and settled for $2.2 million, which included various execution agreements, but allowed them to execute against one-third of any money W. might receive in malpractice action against his attorney; in W's malpractice action against his attorney, that attorney's attorney sought to depose step-daughters; trial court ordered deposition, and step-daughters brought special action to challenge that ruling).

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶ 2 (Ct. App. 2011) (issue was whether victims in criminal proceeding (involving money offenses) could refuse request of defendants in those criminal proceeding for deposition in parallel civil (forfeiture) proceeding).

2.a.2.sa.020 This rule allows prosecutor to institute special action proceedings at the request of a victim to seek relief from an order that violates a victim's rights under the Victim's Bill of Rights, and there is no requirement that the victim initiates the request for help from the state.

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶¶ 5–6 (Ct. App. 2011) (state brought special action proceeding to determine whether victims in criminal proceeding (for fraudulent schemes/artifices, theft, illegally conducting enterprise, and money laundering) could refuse request of defendants in criminal proceeding for deposition in parallel civil (forfeiture) proceeding; court noted no victim specifically requested state's representation or filing of special action or refused to be deposed; state sent letters to victims, who then took affirmative step of notifying state they wished to assert right to refuse pre-trial depositions).

ARTICLE X. ADDITIONAL RULES.

RULES OF THE ARIZONA SUPREME COURT.

RULES OF PROFESSIONAL CONDUCT.

Rule 41(c)Duties and Obligations of Members—Respect to courts and judicial officers.

41.c.010 Members have an obligation to maintain respect to the courts and to judicial officers.

In re Abrams, 227 Ariz. 248, 257 P.3d 167, ¶¶ 13–48 (2011) (city court judge had consensual sexual relationship with Attorney A who appeared before him in court; after that affair ended, judge tried to begin similar relationship with Attorney B, who appeared before him in court, but she rebuffed his advances, with the result that judge made life difficult for that attorney; judge also sent sexually explicit e-mails to Attorney C, but she only appeared before him a few times; city attorney filed sexual harassment complaint against judge based on his conduct with Attorney B, and superior court presiding judge upheld claims; city counsel voted to remove judge from bench effective 1/19/11; judge resigned from bench 1/18/11; court noted because judge had resigned, harshest sanction available in judicial discipline proceedings was censure; court found numerous ethical violations, and imposed censure, enjoined him from serving as judicial officer in Arizona, and suspended him from practice for 2 years).

Rule 42, ER 8.4(c) Misconduct—Conduct involving dishonesty, fraud, deceit, or misrepresentation.

8.04.c.010 A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

In re Abrams, 227 Ariz. 248, 257 P.3d 167, ¶¶ 18–48 (2011) (city court judge had consensual sexual relationship with Attorney A who appeared before him in court; after that affair ended, judge tried to begin similar relationship with Attorney B, who appeared before him in court, but she rebuffed his advances, with the result that judge made life difficult for that attorney; judge also sent sexually explicit e-mails to Attorney C, but she only appeared before him a few times; judge resigned from bench 1/18/11; court held conduct violated this section (among others), enjoined him from serving as judicial officer in Arizona, and suspended him from practice for 2 years).

Rule 42, ER 8.4(d) Misconduct—Conduct prejudicial to the administration of justice.

In re Abrams, 227 Ariz. 248, 257 P.3d 167, ¶¶ 18–48 (2011) (city court judge had consensual sexual relationship with Attorney A who appeared before him in court; after that affair ended, judge tried to begin similar relationship with Attorney B, who appeared before him in court, but she rebuffed his advances, with the result that judge made life difficult for that attorney; judge also sent sexually explicit e-mails to Attorney C, but she only appeared before him a few times; judge resigned from bench 1/18/11; court held conduct violated this section (among others), enjoined him from serving as judicial officer in Arizona, and suspended him from practice for 2 years).

Rule 46(d) Jurisdiction in discipline and disability matters—Former judges.

46.c.010 When a judge resigns from office as the result of judicial discipline, the judge and the State Bar may recommend whether lawyer discipline should be imposed based on the record in the judicial proceedings, and if so, the extent of any discipline.

In re Abrams, 227 Ariz. 248, 257 P.3d 167, ¶¶ 13–48 (2011) (city court judge had consensual sexual relationship with Attorney A who appeared before him in court; after that affair ended, judge tried to begin similar relationship with Attorney B, who appeared before him in court, but she rebuffed his advances, with the result that judge made life difficult for that attorney; judge also sent sexually explicit e-mails to Attorney C, but she only appeared before him a few times; city attorney filed sexual harassment complaint against judge based on his conduct with Attorney B, and superior court presiding judge upheld claims; city counsel voted to remove judge from bench effective 1/19/11; judge resigned from bench 1/18/11; court noted because judge had resigned, harshest sanction available in judicial discipline proceedings was censure; court found numerous ethical violations, and imposed censure, enjoined him from serving as judicial officer in Arizona, and suspended him from practice for 2 years).

February 26, 2012